IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1064 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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JANMOHMMED ISMAIL RAUMA &2 - Appellant(s)

Versus

BHIMABHAI @ BHOMRAJ MOMAYA &2 - Defendant(s)

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Appearance :

MR KF DALAL for Petitioner No(s).: 1,2,3.

MR AR THACKER for Respondent No(s).: 1.

RULE SERVED for Respondent No(s).: 2,3.

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CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date : 06/07/2005

ORAL JUDGMENT

1. This First Appeal is preferred by the appellants – original opponents to challenge the judgment and award rendered by M.A.C.Tribunal Kachchh at Bhuj in M.A.C.Petition No.141 of 1983 on 27th February,1986..

2. The claim petition arose out of an accident that occurred on 19thFebruary,1982 at about 5.00 a.m. on National Highway No.8-A near Village Samakhiyali. Truck Nos.GTS-6962 and GTF-4206 were going in same direction and when one of the truck tried to over take the other, the accident occurred. The claimant was travelling in one of the trucks as a cleaner and he sustained injuries on his right knee. The claimant initially took treatment in the Government hospital, Bhachau as an indoor patient. Therefrom, he was removed to Satalpur and then, was required to be shifted to Ahmedabad for further treatment. The claimant took treatment at Civil Hospital, Ahmedabad. According to claimant, he was earning Rs.450/- per month. He sustained permanent partial disablement because of the injuries and had to undergo surgery and, therefore, under various heads, according to him, he would be entitled to a compensation of Rs.2,31,000/-. However, the claimant restricted his claim to Rs.1,00,000/- only.

1. The drivers, owners and the insurers of both the trucks were joined as party opponents before the Tribunal and were represented by same Advocate. In the written statement, it was contended that the claimant being a cleaner, he should have approached the Workmen's Compensation Commissioner for compensation. It is also contended that the claim of the claimant was highly exaggerated and he be put to strict proof of his entitlement.

4. The Tribunal, after considering the evidence led by parties, came to conclusion that the claimant was entitled to a compensation of Rs.1,00,000/- as claimed. The Tribunal awarded compensation under various heads as under :

Rs. 7000/-	for actual loss of income
Rs. 6000/-	
Rs.60,000/-	under head of future loss of income
Rs.12,000/-	for loss of expectation and comfort of life
Rs.15,000/-	under head of pain, shock and suffering
Total Rs.1,00,000/-	

5.Aggrieved by the said judgment and award, the original opponents have preferred this appeal on the grounds stated in the memo of appeal.

6. Learned Advocate Mr.Dalal appearing for the appellant submitted that the Tribunal has committed grave error in computing the compensation under various heads. According to him, the Tribunal has given contrary findings on aspect of permanent partial disablement by recording on one hand that the claimant failed to establish the fact that he had permanent disability and simultaneously, awarded Rs.60,000/- under head of future loss of income purely on basis of presumption and assessment.

6.1 Learned Advocate Mr.Dalal also submitted that the Tribunal erred in awarding Rs.12,000/- as compensation under head of loss of expectation of life in these given set of circumstances when the Tribunal has awarded Rs.15,000/- as compensation under head of pain, shock and suffering.

6.2 Learned Advocate Mr.Dalal also submitted that there is no evidence to show that the claimant was earning Rs.450/- per month and the Tribunal erred in awarding Rs.7000/- as compensation under the head of actual loss of income. He submitted that the findings by the Tribunal are self-contradictory and against the settled principles of law. The appeal, therefore, may be allowed on quantum aspect.

7. The appeal is opposed to by learned Advocate Mr.Thakkar. He submitted that this appeal is not maintainable as requisite permission under Section 170 of the Motor Vehicles Act,1988 equivalent to Section 110(C) of the Motor Vehicles Act,1939 has not been obtained. He also took this Court through R &P, particularly deposition of Dr.Shah at Exh.55 to bring home a point that the claimant did suffer permanent partial disablement and, therefore, the award under head of future loss of income by the Tribunal is justified.

7.1 Mr.Thakkar also contended that there is ample material to show that the claimant did suffer for a long time. The claimant has adduced evidence to show that his income was Rs.450/- per month in addition to allowance of Rs.150/- per month approximately and, therefore, the award under the head of actual loss of income by the Tribunal is justified. Mr.Thakkar submitted that the Tribunal was handling a case for compensation and as per settled principles of law, strict rules of evidence and procedure were not required to be followed. The legislation is benevolent in nature and, therefore, the Tribunal has exercised its judicial discretion and this Court may not interfere with the judgment and award. The appeal may, therefore, be dismissed.

8. This Court has gone through R &P and has examined the record from the angle suggested by learned Advocates for the parties.

8.1 At the outset, regarding maintainability of the appeal, it may be stated that question of permission under Section 170 of the Motor Vehicles Act,1988 and 110(C) of the Motor Vehicles Act,1939 would arise only where only the insurer prefers an appeal or to contest a claim. There has to be a case where collusion between claimant and insured is alleged and shown. In the case on hand, the driver, owners and insurer of both the vehicles were defended by same learned Advocates before the Tribunal. The appellants are represented before this Court by same advocate and there is no question of any allegation of collusion. Under the circumstances, there is no question of not entertaining this appeal on this technical plea.

9. Now going to the merits of the case, it may be stated at the outset that the appellants have restricted their challenge to the judgment and award only on quantum aspect and do not challenge the award either on liability part or on negligence.

10. The main attack by the appellants is on award of compensation under the head of future loss of income. In this regard, it would be sufficient to record that even as per Tribunal as recorded in Para.19 and 22 of the judgment, the claimant had failed to prove that he had any permanent disability. If that be the situation, the Tribunal could not have awarded any compensation under the head of future loss of income. Learned Advocate Mr.Thakkar attempted to convince this Court that from the deposition of Dr.Shah at Exh.55, the factum of claimant suffering permanent partial disability can be inferred. Legally, when respondent – original claimant has not challenged these findings of the Trial Court on disability by preferring an appeal or even by filing cross-objections, it is not open to respondent to take such a plea. Still, however, not taking a technical view, this Court has gone through the deposition of Dr.Shah recorded through Court Commissioner. In entire deposition, there is not a whisper that the doctor had examined the claimant for assessment of permanent partial disability. Doctor has at some point of time stated that on examining X-ray Plates, he is of the opinion that the patient may have difficulty in folding the leg or performing his chores but, the doctor does not give a specific or positive evidence that the patient would have a disability and/or it would be of a permanent nature nor does the doctor indicate any percentage of disability. In these set of circumstances, in absence of total medical evidence, the Tribunal was right in observing that there is no evidence to show that the claimant had sustained permanent disability.

11. In light of above set of circumstances, the Tribunal could not have made these observations in Para.22.

“As regards the future loss of income, it is not proved that the injured had permanent disability, which would prevent him from doing any work and hence, the total loss of income is ruled out at the same time on account of injuries on the leg with some residual effect presumed to have remained over, some loss of income may be presumed”.

11.1 Thus, the Tribunal has proceeded on pure presumption while assessing and awarding compensation under the head of future loss of income to the extent of Rs.60,000/-. The Tribunal has proceeded on a premise that the future loss of income can be taken at Rs.250/- per month as against income of Rs.450/- per month of the claimant which would indicate permanent partial disability of 55% in respect of body as a whole and this is done without any evidence on pure presumption in face of its own observation that the claimant has failed to prove permanent partial disability. In the opinion of this Court, it was not open for the Tribunal to have undertaken the task of assessing permanent partial disability of the claimant in absence of medical evidence and assistance. In fact, this task falls within regime of a medical expert. Thus, award of compensation of Rs.60,000/- under the head of future loss of income to the claimant cannot be permitted to stand.

12. Since the appeal is restricted only to the extent of Rs.60,000/-, the appeal deserves to be allowed for the foregoing reasons and same is allowed. The award of the Tribunal is reduced by Rs.60,000/-. The claimant, therefore, would be entitled to a compensation of Rs.40,000/- with proportionate cost and interest as awarded by the Tribunal. The award stands modified to the above effect. No order as to costs of appeal.

13. It is indicated that the appellants have deposited Rs.1,41,060/- with the Tribunal as per order of this Court dated 11thFebruary,1988. The Tribunal is directed to pay the compensation amount of Rs.40,000/- along with proportionate cost and interest to the claimant, on the claimant making an application after following due procedure out of the deposited amount. Remaining amount out of deposited amount, shall be receivable by the appellant who has deposited the awarded amount with Tribunal.

(A.L.DAVE,J.)

(VIPUL)